Supreme Court, U.S.
FILED
05-331 SEP 12 2005
OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

AIR CONDITIONING & REFRIGERATION INSTITUTE *et al.*,
Petitioners,

v.

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

CARTER G. PHILLIPS*
JOSEPH R. GUERRA
ERIC A. SHUMSKY
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Petitioners

* Counsel of Record

[Additional Counsel Listed on Inside Cover]

September 12, 2005

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

STEPHEN R. YUREK
GENERAL COUNSEL
VICE PRESIDENT, POLICY &
PUBLIC AFFAIRS
AIR-CONDITIONING &
REFRIGERATION INSTITUTE
4100 North Fairfax Drive
Suite 200
Arlington, VA 22203
(703) 524-8800

JOSEPH M. MATTINGLY
VICE PRESIDENT, SECRETARY
AND GENERAL COUNSEL
GAS APPLIANCE
MANUFACTURERS
ASSOCIATION, INC.
1207 Wilson Blvd
Suite 600
Arlington, VA 22201
(703) 525-7060

CHARLES A. SAMUELS
GENERAL COUNSEL
ASSOCIATION OF HOME
APPLIANCE MANUFACTURERS
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO PC
701 Pennsylvania Avenue,
N.W.
Washington, D.C. 20004
(202) 434-7300

CLARK REID SILCOX
COUNSEL
NATIONAL ELECTRICAL
MANUFACTURERS
ASSOCIATION
1300 North 17th Street
Suite 1847
Rosslyn, VA 22209
(703) 841-3200

JOHN A. HODGES
BRUCE L. MCDONALD
PETER J. RIEHM
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

QUESTION PRESENTED FOR REVIEW

Since 1975, Congress has enacted a series of energy statutes that regulate efficiency standards, testing, information disclosure and labeling. Those same statutes contain express preemption provisions. See 42 U.S.C. §§ 6297(a), 6316. The question presented is:

Whether the Ninth Circuit's crabbed interpretation of Congress's express preemption provisions conflicts with decisions of this Court and other courts of appeals by rewriting the federal statute in order to preserve state regulations, and thereby undermines the important federal interest in uniformity embodied in the federal statutes.

PARTIES TO THE PROCEEDINGS

In addition to the parties listed in the caption, the following were Plaintiffs-Appellees below and are Petitioners here:

Gas Appliance Manufacturers Association
Association of Home Appliance Manufacturers
National Electrical Manufacturers Association;

and the following were Defendants-Appellants below and are Respondents here:

William J. Keese, Chairman
Robert Pernell, Commissioner
Aurthur H. Rosenfeld, Commissioner
James D. Boyd, Commissioner
John L. Geesman, Commissioner

RULE 29.6 STATEMENT

Petitioners are industry membership organizations. None of the four entities has a parent corporation or issues stock.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS	ii
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
JUDGMENT FOR WHICH REVIEW IS SOUGHT	1
JURISDICTION	1
STATUTES OR OTHER PROVISIONS INVOLVED	1
STATEMENT	2
I. STATUTORY BACKGROUND	3
II. PROCEDURAL BACKGROUND	9
REASONS FOR GRANTING THE PETITION	11
I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN *ENGINE MANUFACTURERS ASSOCIATION*	11
II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS REGARDING THE "PRESUMPTION AGAINST PREEMPTION"	14
III. THE DECISION BELOW, IN UNDERMINING FEDERAL UNIFORMITY, IMPLICATES IMPORTANT FEDERAL INTERESTS AND IMPOSES GREAT HARM ON NATIONAL MANUFACTURERS	21
CONCLUSION	25

TABLE OF AUTHORITIES

CASES Page

Bates v. *Dow Agrosciences LLC*, 125 S. Ct. 1788 (2005) 15
Bronco Wine Co. v. *Jolly*, 95 P.3d 422 (Cal. 2004), *cert. denied*, 125 S. Ct. 1646 (2005) 16
Buckman Co. v. *Plaintiffs Legal Comm.*, 531 U.S. 341 (2001) 14, 15, 16
Cliff v. *Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113 (11th Cir. 2004) 16
College Loan Corp. v. *SLM Corp.*, 396 F.3d 588 (4th Cir. 2005) 16
De Buono v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806 (1997) 15
Egelhoff v. *Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001) 18, 19
Engine Mfrs. Ass'n v. *South Coast Air Quality Mgmt. Dist.*, 158 F. Supp. 2d 1107 (C.D. Cal. 2001), *aff'd*, 309 F.3d 550 (9th Cir. 2002), *vacated*, 541 U.S. 246 (2004) 13
Engine Mfrs. Ass'n v. *South Coast Air Quality Mgmt. Dist.*, 309 F.3d 550 (9th Cir. 2002), *vacated*, 541 U.S. 246 (2004) 13
Engine Mfrs. Ass'n v. *South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004), *vacating* 309 F.3d 550 (9th Cir. 2002) 2, 13
Forest Park II v. *Hadley*, 336 F.3d 724 (8th Cir. 2003) 16
Frank Bros., Inc. v. *Wisconsin Dep't of Transp.*, 409 F.3d 880 (7th Cir. 2005) 17
Massachusetts v. *United States Dep't of Transp.*, 93 F.3d 890 (D.C. Cir. 1996) 16
Morales v. *Trans World Airlines*, 504 U.S. 374 (1992) 17

TABLE OF AUTHORITIES—continued

Page

New York State Conf. of Blue Cross & Blue Shield Plans v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) 18

Pinney v. *Nokia, Inc.*, 402 F.3d 430 (4th Cir. 2005), *petitions for cert. filed*, 74 U.S.L.W. 3108, 3114 (U.S. Aug. 10, 2005) (Nos. 05-198, 05-207) 16

Puerto Rico Dep't of Consumer Affairs v. *Isla Petroleum Corp.*, 485 U.S. 495 (1988) 20, 21

UPS, Inc. v. *Flores-Galarza*, 318 F.3d 323 (1st Cir. 2003) 16

United States v. *Locke*, 529 U.S. 89 (2000) 15

Wachovia Bank, N.A. v. *Burke*, 414 F.3d 305 (2d Cir. 2005) 16

FEDERAL STATUTES AND REGULATIONS

Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (1975) 3

National Energy Conservation and Policy Act, Pub. L. No. 95-619, 92 Stat. 3206 (1978) 3

National Appliance Energy Conservation Act of 1987, Pub. L. No. 100-12, 101 Stat. 103 4

Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 4

Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 4

42 U.S.C. § 6292(a) 4

§ 6293 4

§ 6294 4

§ 6295 4

§ 6296(d) 4

§ 6297 ..... *passim*

§ 6305(a)(2) 20

TABLE OF AUTHORITIES—continued

	Page
42 U.S.C. § 6311(1)	4, 5
§ 6313	4
§ 6314	4
§ 6315	4
§ 6316	2, 5, 7
§ 7543(a)	13
Cal. Pub. Res. Code §§ 25200-25226	7
§ 25401(d)	7
§ 25402(c)(1)-(2)	7
10 C.F.R. pt. 430	4
§§ 430.40-.49	6
§ 430.62	5
pt. 431	4
§§ 431.16-.18	4
§ 431.30-.31	5
§ 431.36	5
§ 431.76	4
§ 431.86	4
§ 431.96	4
16 C.F.R. pt. 305	8
§ 305.8	5, 8
§ 305.11	5
§ 305.11 app. L	5
§§ 305.11-.12	4
§§ 305.11-.14	5
Cal. Code Regs. tit. 20, § 1603	7
§ 1604	7
§ 1606	7, 8
§§ 1606-1608	2, 7
§ 1607	8, 18
§ 1608(a)	9

TABLE OF AUTHORITIES—continued

LEGISLATIVE HISTORY

Page

H.R. Rep. No. 94-340 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1762 22
H.R. Rep. No. 100-11 (1987) 6, 22
S. Rep. No. 100-6 (1987), *reprinted in* 1987 U.S.C.C.A.N. 52 ..... 6, 20, 22
S. Conf. Rep. No. 94-516 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1956 ..... 3, 4, 22

OTHER AUTHORITIES

Black's Law Dictionary (8th ed. 2004) 12
Webster's Third New International Dictionary (3d ed. 1993) 12
Cal. Energy Comm'n, Appliance Efficiency and Appliance Regulations, http://www.energy.ca.gov/efficiency/appliances (last visited Sept. 9, 2005) 8
Federal Trade Comm'n, Appliance Energy Data, http://ftc.gov/bcp/conline/edcams/eande/appliances/index.htm (last visited Sept. 9, 2005) 5

PETITION FOR A WRIT OF CERTIORARI

Petitioners Air-Conditioning and Refrigeration Institute, Gas Appliance Manufacturers Association, Association of Home Appliance Manufacturers, and National Electrical Manufacturers Association respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The initial decision of the court of appeals is reported at 397 F.3d 755. That opinion was subsequently amended in an opinion that is reported at 410 F.3d 492, and reproduced in the Appendix to this Petition ("Pet. App.") at 1a-22a. The district court's order entering a permanent injunction is unreported, and is reproduced at Pet. App. 23a-44a.

JURISDICTION

The court of appeals entered its judgment on June 3, 2005, Pet. App. 1a, and denied rehearing and rehearing en banc that same day, *id.* at 45a-46a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). On August 4, 2005, Justice O'Connor extended the time for filing a petition to and including September 13, 2005.

STATUTES OR OTHER PROVISIONS INVOLVED

42 U.S.C. § 6297 provides in relevant part:

(a) Preemption of testing and labeling requirements

(1) Effective on March 17, 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if—

> (A) such State regulation requires testing or the use of any measure of energy consumption, water use, or energy descriptor in any manner other than that provided under section 6293 of this title; or
>
> (B) such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under section 6294 of this title.

Section 6316 of title 42 of the United States Code, which incorporates § 6297 by reference, is reproduced at Pet. App. 47a-49a. California Code of Regulations title 20, §§ 1606-1608 are reproduced at Pet. App. 50a-83a.

STATEMENT

For the second time in less than three years, the Ninth Circuit has eviscerated an express preemption provision in an important federal statute by refusing to apply the statute's plain text. Cf. *Engine Mfrs. Ass'n* v. *South Coast Air Quality Mgmt. Dist.* ("*EMA*"), 541 U.S. 246 (2004), *vacating* 309 F.3d 550 (9th Cir. 2002). Since 1975, Congress has enacted a series of laws that regulate energy efficiency standards and mandate certain information disclosures and labeling requirements, and preempt state regulation pertaining to these subjects. Pursuant to these same statutes, the Department of Energy and the Federal Trade Commission have imposed a comprehensive program of federal regulations that require, among other things, that manufacturers disclose information about their products to the federal government, and that impose detailed labeling requirements (including, notably, the well-known, yellow EnergyGuide labels). The federal government also makes the information disclosed to it available to the public through a web site run by the Federal Trade Commission. Yet, despite these federal mandates, California imposes its own disclosure rules and its own labeling requirements which, if allowed to go into effect, will result in

substantial cost for manufacturers. Indeed, a product that does not meet the California requirements cannot be sold in that State.

In determining whether the federal statutes' express preemption provisions apply to California's regulatory requirements, the Ninth Circuit predicated its analysis—as it did in *EMA*—on its value-laden assertion that the state regulation is "laudable." Pet. App. 2a. Just as it did in *EMA*, the Ninth Circuit applied a "presumption against preemption" to narrow the statutory preemption clause, contrary to the statute's plain text and to decisions of this Court and other courts of appeals. And, just as it did in *EMA*, this mistaken analysis implicates a critical question of federal law.

The Ninth Circuit's decision upholding the California regulations thus throws open the door for every State to impose distinct and conflicting obligations on manufacturers, which is precisely what the federal preemption provisions were meant to prevent. Certiorari should be granted to resolve the multiple conflicts created by the decision below, and to return certainty and national uniformity to this important area of federal regulation.

I. STATUTORY BACKGROUND

1. Over the past three decades, Congress has enacted a series of statutes aimed at implementing a "comprehensive national energy policy." S. Conf. Rep. No. 94-516, at 116 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1956, 1957. This effort began in 1975, in the wake of the then-just-ended oil embargo, when Congress enacted the Energy Policy and Conservation Act (EPCA).[1] That statute was subsequently amended in 1978 by the National Energy Conservation and Policy Act (NECPA),[2] and later followed by the National Ap-

---

[1] Pub. L. No. 94-163, 89 Stat. 871 (1975) (codified as amended at 42 U.S.C. § 6291 *et seq.*).

[2] Pub. L. No. 95-619, 92 Stat. 3206 (1978).